

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

C.W.P. No. 10422 of 1988

Date of Decision: Jan. 25,2008

Hawa Singh and others Petitioners

Versus

The Maharishi Dayanand University, Rohtak Respondent

Coram: Hon'ble Mr. Justice Ashutosh Mohunta

Present: Mr. Rajbir Sherawat, Advocate
for the petitioners.

Mr. Ashok Aggarwal, Sr. Advocate with
Mr. Nilesh Bhardwaj, Advocate
for the respondent.

....

ASHUTOSH MOHUNTA, J.

The petitioners have prayed that directions be issued to the Maharishi Dayanand University (hereinafter referred to as 'MDU') to pay them arrears of pay from the date of their promotion with retrospective effect.

Briefly the facts of the case are that the petitioners were initially appointed with Kurukshetra University as Clerks. On formation of MDU at Rohtak in the year 1976, initially only those colleges which were situated in Rohtak district were affiliated to it but subsequently the colleges situated in district Bhiwani, Sonapat, Gurgaon, Mohindergarh and Faridabad which were earlier affiliated to Kurukshetra University were transferred and affiliated with MDU. On a requisition made by MDU, Kurukshetra University asked the option of the staff employed in the Kurukshetra University for their absorption in MDU with a clear stipulation that their seniority or the service rendered by them in the Kurukshetra University shall be considered to be service by the transferee university as well. The petitioners gave their options to be transferred to MDU and have been working in the said University since then. The question regarding the *inter-se* seniority from amongst the officials who had been taken over from Kurukshetra University i.e. the petitioners and the employees who were recruited by MDU directly arose. The MDU authorities decided that promotion posts should be filled from amongst the employees who had come from Kurukshetra University and the

employees who were recruited directly by MDU on 50:50 basis. This criteria was challenged by some of the petitioners on the ground that as they had been recruited much prior to some of the persons who were recruited by MDU, hence they should be given seniority. The civil suit filed by some of the petitioners was decreed by the Senior Sub Judge, Rohtak, vide judgment dated 14.2.1985. While decreeing the suit, the trial Court had held as under:-

“The defendant No.1 University is directed to prepare a single integrated seniority list of the whole cadre of the Clerks according to their length of service irrespective of the fact whether they were transferred to M.D. University, Rohtak from Kurukshetra University, Kurukshetra, or they had joined M.D. University initially. After preparation of such an integrated single seniority list of all the Clerks, the promotion of the plaintiffs and other be effected in accordance with their seniority of the old list. The plaintiffs be given promotion with retrospective effect if they are found senior as per integrated single seniority list.”

This judgment was challenged by the University by filing an appeal which was allowed and the judgment Annexure P1 was set aside. However, RSA No. 3524 of 1985 was filed and this Court set aside the judgment of the first Appellate Court and restored the judgment Annexure P-1.

From the aforementioned facts it is clear that the University had to prepare a single integrated seniority list of the entire cadre of Clerks according to their length of service irrespective of the fact whether they were transferee MDU from Kurukshetra University or they had joined MDU directly.

As the benefits were not being given to the petitioners despite the directions by the High Court in RSA No. 3524 of 1985, some of the petitioners namely Hawa Singh and Ishwar Singh Tikoria filed another suit for mandatory injunction. The University filed its written statement wherein the stand taken by them was as follows:-

“That the rights of seniority and other financial benefits will be granted to the plaintiffs with retrospective effect as per

judgment/clarification of this Hon'ble Court and as such the plaintiffs would not suffer in any way."

In pursuance to the aforementioned stand of the respondents, the suit was withdrawn by the plaintiffs.

The respondent University implemented the decision by giving directions with retrospective effect to all the Clerks who were concerned. However, while giving seniority and promotions to the petitioners with retrospective effect, no arrears were paid to the petitioners and the same were fixed notionally only. It is because of this decision of the University not to pay any arrears to the petitioners that the present writ petition has been filed.

Mr. Rajbir Sehrawat, counsel for the petitioners, submits that once the petitioners have been given their seniority and promotions with retrospective effect than they are also entitled to the benefit of arrears from the date they were promoted. Learned counsel has placed reliance on the judgments in ***Indraj Singh v. State of Haryana*** reported as 2001 (2) SCT 214 wherein it has been held that an employee who has been promoted with retrospective effect would be entitled to the benefits of arrears from the date he was promoted. The petitioners have also placed reliance on ***Karnail Singh v. Punjab State Electricity Board and others*** 2006 (4) RSJ 671 wherein it has been held that the petitioner cannot be denied the monetary benefits of higher post to which promotion has already been granted by way of deemed date of promotion.

In reply to the aforementioned arguments, the stand of the respondent University is that as the petitioners have never worked from the date when they have been given their promotions, hence, they are not entitled to any arrears of pay.

After hearing the counsel for the parties, I am of the considered opinion that the petitioners were wrongly denied their seniority and promotions from the date it became due. The promotions were given to the petitioners with retrospective effect much later and, hence, the petitioners cannot be denied the arrears of their salary. The petitioners have been deprived of the benefits of promotion for no fault of their although they were eligible for the same, and as the mistake of not paying the arrears lays solely with the University, hence, the petitioners cannot be denied the

arrears of pay. In *Vidya Parkash Harnal v. State of Haryana* 1995 (3) SCT 785 this Court while relying upon the judgment of the Supreme Court in *Union of India etc. v. K.V. Jankiraman etc.* AIR 1991 Supreme Court 2010 has observed as under:-

“Similarly, the argument that the petitioner was not entitled to the grant of emoluments on the principle of “no work, no pay” is apparently misconceived and based upon wrong notions of law. If a civil servant is not offered the work to which he was legally entitled, he cannot be deprived of the wages for the post to which he subsequently is held entitled to. Permitting such a course to be adopted would be encouraging the imposition of double penalty, that is firstly by declining the civil servant his right of promotion and secondly by depriving him of the emoluments to which he would have been entitled to upon promotion which subsequently is considered in his favour. Deprivation to work against the post to which a civil servant is entitled on promotion is always at the risk and responsibility of the State and cannot be made a basis for depriving such a civil servant of the emoluments to which he was entitled, had he been promoted in accordance with the rules at the time when he become eligible for such promotion. The Courts cannot ignore the magnitude of the sufferings and the pains to which a civil servant is subjected on account of deprivation of the monetary benefits particularly in this case of skyrocketing prices and non-availability of essential requirements of livelihood. The Court cannot shut its eyes and forget the holocaust of economic deprivation to the petitioner and his dependents. Such a deprivation might have upset the career of the dependents, depriving the society of the services of such youth and budding dependents or children of the petitioner. The executive once being satisfied that a civil servant was entitled to the promotion with retrospective effect cannot deprive him of the benefits of salary accruing on account of such promotion from an early date without assigning valid, cogent and specific reasons. The order

impugned in this case by which the petitioner/appellant was deprived of his right to claim back wages is admittedly non-speaking without assigning any justification or cogent and specific reasons.”

The same view has further been reiterated by this Court in Civil Writ Petition No. 11749 of 1996, Krishan Kumar v. The Haryana State Federation of Consumers Co-operative Wholesale Stores Ltd. and another, decided on 10.12.1996: 1997 (1) SCT 686 (P&H) (DB), wherein the promotion order carrying a condition of non-payment of arrears of salary to the extent of the condition was quashed.

In view of the aforementioned facts, the prayer of the petitioners to pay them the arrears of pay is absolutely justified.

Resultantly, the writ petition is allowed and directions are given to the respondents to pay the arrears of pay to the petitioners within a period of three months from the date of receipt of a certified copy of this judgment.

Jan. 25, 2008
rupi

(ASHUTOSH MOHUNTA)
JUDGE